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PEOPLE REALTY SDN BHD

v.

HONG LEONG BANK BHD & ANOR

B

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
LOW HOP BING JCA
RAUS SHARIF JCA
[CIVIL APPEAL NO: B-02-517-2006]

C

13 SEPTEMBER 2007

LAND LAW: *Sale of land - Auction - Whether sale done at fair market value - Whether purchaser obtained indefeasible title to land*

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The appellant appealed against the decision of the Judicial Commissioner ('JC') dismissing, namely, the appellant's application to set aside the auction sale of the appellant's land ('the said land') and the appellant's appeal to the judge in chambers on the reserve price fixed by the Senior Assistant Registrar ('SAR'). The

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appellant's main complaint was that the valuation report relied upon by the SAR to fix the reserve price of the said land contained serious and unacceptable inconsistencies. Therefore, the sale of the said land was not done at a fair market value.

Held (dismissing the appeal)

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Per Raus Sharif JCA delivering the judgment of the court:

(1) The appellant, although challenging the valuation of the said land, did not produce any valuation report to counter the valuation report tendered by the first respondent. As such, it

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was not open to the appellant to challenge the derivation of the reserve price. Further, the valuation report tendered by the first respondent showed that the valuer used proper methods in determining the market value of the said land. (paras 8 & 9)

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(2) The challenges made on the order for sale on the grounds that the first respondent failed to comply with the directions in the order of the SAR had no consequence to the order for sale. The title or interest of the appellant, as the chargor of the

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said land was passed to and vested with the second respondent as the purchaser of the said land by virtue of s. 267 National Land Code. (paras 10 & 11)

(3) There was no dispute that the High Court issued the certificate of sale to the second respondent and that the said land was duly registered in the second respondent's name. The disputes by the appellant against the first respondent in respect of the order for directions and the auction sale shall not affect the indefeasibility of title of the second respondent over the said land. That was fortified by the fact that the appellant failed to show that the value of the sale was so undervalued as to indicate fraud or want of proper standard of care. On the facts, the learned JC rightly decided the second respondent was a *bona fide* purchaser for value with an indefeasible title to the said land. (para 12)

Bahasa Malaysia *Translation Of Headnotes*

Perayu merayu terhadap keputusan Pesuruhjaya Kehakiman ('PK') yang menolak permohonannya untuk mengenepikan penjualan secara lelong tanahnya ('tanah tersebut'), dan rayuannya kepada hakim dalam kamar terhadap harga rizab yang ditetapkan oleh Penolong Kanan Pendaftar ('PKP'). Rungutan utama perayu adalah bahawa laporan penilaian yang menjadi pergantungan PKP bagi menetapkan harga rizab tanah tersebut mengandungi percanggahan-percanggahan yang serius dan tidak boleh diterima. Akibatnya, penjualan tanah tersebut adalah tidak berdasarkan harga pasaran yang wajar.

Diputuskan (menolak rayuan)
Oleh Raus Sharif HMR menyampaikan penghakiman mahkamah:

(1) Perayu, walaupun mencabar penilaian tanah tersebut, tidak mengemukakan sebarang laporan penilaian bagi menyangkal laporan penilaian yang dikemukakan oleh responden pertama. Oleh itu, adalah tidak terbuka bagi perayu untuk mencabar penetapan harga rizab tersebut. Selain itu, laporan penilaian yang dikemukakan oleh responden pertama menunjukkan bahawa penilai menggunakan kaedah yang wajar dalam menentukan harga pasaran tanah tersebut.

(2) Cabaran-cabaran yang dibuat terhadap perintah jualan atas alasan bahawa responden pertama gagal mematuhi arahan-arahan di dalam perintah PKP tidak boleh menjejaskan perintah jualan. Hakmilik atau kepentingan perayu sebagai

penggadai tanah tersebut telah diserahkan dan menjadi terletakhak kepada responden kedua selaku pembeli tanah tersebut, berdasarkan s. 267 Kanun Tanah Negara.

(3) Tiada pertikaian bahawa Mahkamah Tinggi telah mengeluarkan sijil jualan kepada responden kedua dan bahawa tanah tersebut telah didaftarkan dengan teraturnya atas nama responden kedua. Sementara itu, pertikaian perayu terhadap responden pertama berhubung perintah untuk arahan dan penjualan lelong, tidak boleh menjejaskan ketaksangkalan hakmilik responden kedua terhadap tanah tersebut. Ini diperkukuhkan oleh fakta bahawa perayu gagal menunjukkan bahawa tanah tersebut dinilai sebegitu rendah sehingga mencerminkan fraud atau ketidakgunaan standard berjaga-jaga yang wajar. Berdasarkan fakta, yang arif PK telah memutuskan dengan betulnya bahawa responden kedua adalah pembeli *bona fide* dengan nilai dan mempunyai hakmilik tak boleh sangkal ke atas tanah tersebut.

Case(s) referred to:
Bank Kerjasama Rakyat Malaysia v. Daya Plaza Sdn. Bhd., Empire Possession Sdn Bhd (Intervener) [1998] 5 CLJ 79 HC ***(refd)***

Legislation referred to:
National Land Code, s. 267(1)

For the appellant - K Shanmuga; M/s Kanesalingam & Co
For the respondent - Andrew Chiew Ean Vooi; M/s Lee Hishammuddin Allen & Gledhill

Reported by Usha Thiagarajah

JUDGMENT

Raus Sharif JCA:

[1] This is an appeal by the appellant against two decisions of the learned Judicial Commissioner Shah Alam, made on 21 April 2006, namely:

(a) dismissal of the appellant's application to set aside the auction sale dated 12 May 2003 (1st decision); and

(b) dismissal of the appellant's appeal to the Judge in Chambers on the reserve price fixed by the Senior Assistant Registrar on 2 December 2002 (2nd decision).

[2] On 20 June 2007 we heard and dismissed the appeal. We now give our reasons. First, the relevant facts. A

[3] On 19 October 1995 the appellant executed a National Land Code charge ("the charge") in favour of the Hong Leong Bank Bhd. ("1st respondent"). The charge was created over two lots of land owned by the appellant namely Lot No. s: 5808 and 5809, C.T. No. s: 20462 and 20463, Mukim Petaling, Daerah Kuala Lumpur ("the said land"). The charge was to secure the repayment of banking facilities granted by the 1st respondent to the appellant. B C

[4] On 26 March 1999 the 1st respondent filed an Originating Summons in Shah Alam High Court, applying *inter alia* for an order for sale of the said land. An order for sale of the said land was granted by the High Court on 29 June 2001. Pursuant to the Summon For Directions dated 15 April 2002 filed by the 1st respondent, the Senior Assistant Registrar (SAR) issued an order directing that the sale of the said land is to be by way of public auction and fixed the reserve price at RM6.2 million. D

[5] The 2nd respondent attended the auction sale at Shah Alam High Court on 12 May 2003 and succeeded in bidding the said land at the reserve price of RM6.2 million. A deposit of RM620,000 was paid. The balance of purchase price was settled on 7 August 2003, within the time limit fixed. E F

[6] On 19 February 2003 a certificate of sale (Form 16F of National Land Code) was issued by the Shah Alam High Court. However, the said certificate of sale could not be presented for registration at the office of Registrar of Titles, Selangor, as the appellant has entered a private caveat on the said land. The 2nd respondent applied to remove the said private caveat and this was allowed by the Shah Alam High Court on 21 June 2004. Pursuant thereto, the said land was duly registered in the name of the 2nd respondent as the registered owner. The 2nd respondent has since then commenced their respective works to develop the said land *inter alia* as a housing project. G H

[7] The main complaint by the appellant in this appeal is the reliance by the SAR on the valuation report dated 20 September 2001 tendered by the 1st respondent, as the basis of fixing the reserve price for the said land. According to the appellant, the I

valuation report contains serious and unacceptable inconsistencies and should not have been accepted by the SAR. Thus, it is contended by the appellant that the sale was not done at a fair market value.

[8] With utmost respect, we are unable to subscribe the appellant's argument. To us, since the appellant is challenging the valuation of the said land, it is necessary for the appellant to submit its own valuation report to counter the valuation report tendered by the 1st respondent. However, in this case, the appellant has not produced any valuation report to show that the market value of the said land was more than RM6.2 million. In *Bank Kerjasama Rakyat Malaysia v. Daya Plaza Sdn. Bhd., Empire Possession Sdn. Bhd. (Intervener)* [1998] 5 CLJ 79 Arifin Zakaria, J (now Federal Court Judge) held at p. 85 that:

> What is even more fatal to the defendant's case is that even assuming for the sake of argument that there was a breach of duty of care by the plaintiff in the conduct of the auction of the said lands, the burden is on the defendant to prove that the defendant has suffered damage as the result thereof. This means to say that the defendant has to satisfy the court, on the balance of probabilities the said land has been sold at a price below the market value. Since the issue involves the valuation of the said lands, therefore, it is necessary for the defendant to submit its own valuation report to challenge the valuation report submitted by the plaintiff. In the circumstances, the Court is left with no alternative but to accept the valuation report submitted by the plaintiff.

[9] Similarly in the present case the appellant failed to produce its own valuation. In fact the appellant did not file in any affidavit to challenge the 1st respondent's application to fix the reserve price at RM6.2 million. Thus, in the absence of any affidavit evidence and the valuation report challenging the valuation report submitted by the 1st respondent, it is not open to the appellant now to challenge the derivation of the reserve price. In any event, it is our respectful view that the valuation report tendered by the 1st respondent had shown that the valuer has used the proper methods in determining the market value of the said land.

[10] The challenge made on the order for sale was also mounted on the grounds that the 1st respondent had failed to comply with the directions in the order of the SAR dated 2 December 2002 namely:

(i) the proclamation of sale was not advertised in the newspaper in Bahasa Malaysia;

(ii) the proclamation of sale was not served on the appellant;

(iii) short service of the order of sale; and

(iv) the sale was fixed more than 1 1/2 years after the reserved price was fixed.

[11] However, we are of the view that such challenges are of no consequence to the order for sale. This is because the title or interest of the appellant, as the chargor of the said land had been passed to and vested with the 2nd respondent, as the purchaser of the said land, by virtue of s. 267 (1) of the NLC. The section reads:

> S. 267(1) Any certificate of sale given to a purchaser under subsection 3 of section 259 or subsection (4) of section 265 in respect of any charged land or lease shall be treated for all the purposes of this Act as an instrument of dealing, and shall be registrable accordingly under Part Eighteen; and, upon the registration thereof:
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> (a) the title or interest of the chargor shall pass to and vest in the purchaser, freed and discharged from all liability under the charge in question and any charge subsequent thereto; and
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> (b) subject to paragraph (a), and subsection (2), the relevant provisions of Part Fourteen shall apply as if the chargor had transferred the land or lease to the purchaser in accordance with the provisions of that Part.

[12] In this case there is no dispute that the Shah Alam High Court had issued the certificate of sale to the 2nd respondent and the said land was thereafter duly registered in the name of the 2nd respondent. Thus, the disputes by the appellant against the plaintiff in respect of the order for directions and the auction sale shall not affect the indefeasibility of title of the 2nd respondent over the said land. This is fortified by the fact that the appellant had failed to show that the value of the sale was such an undervalue as to indicate fraud or want of proper standard of care. Thus, on the facts of this case the learned Judicial

A Commissioner had rightly decided that the 2nd respondent was a *bona fide* purchaser for value and therefore has an indefeasible title to the said land.

[13] For the above said reasons, we unanimously dismissed the B appeal with 1/2 costs to the respondents.

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